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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment delivered on: 9th September, 2014*

+ W.P.(C) 1462/2011

DTC

..... Petitioner

Represented by: Ms. Bhakti Pasrija Sethi,
Adv.

Versus

MOHINDER SINGH

..... Respondent

Represented by: NEMO.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide the present petition, the petitioner has assailed the award dated 01.04.2010, whereby the Ld. Labour Court directed the petitioner to reinstate the respondent / workman with all consequential benefits for the purpose of pension etc.

2. Ms. Bhakti Pasrija Sethi, Ld. Counsel appearing on behalf of the petitioner / DTC submits that the chargesheet against the respondent / workman was as under:

“That on 25.11.1992, while you were scheduled to perform your duty on Bus no. D.S.P.9439, Delhi to Tanakpur Route. The checking team of the vigilance department when checked the tickets of the passengers getting down from your bus at around 1645 hrs. found two passengers without ticket. On asking they told that they took the bus from Bareilly and gave Rs.14.00 to the conductor who did not issue ticket even after they demanded the same.

On further checking of the bus 13 passengers were found getting down from bus without ticket. On asking it transpired that two passengers took the bus from Bareilly to Naharia, one passenger took the bus from Bareilly to Manjhola and 10 passengers took the bus from Bareilly to Pilibhit and they gave 32 rupees (for two tickets), Rs.17.50 (for one ticket) and 120 rupees (for 10 tickets) respectively to the Conductor but they were not issued any ticket.

Your voucher when checked was also incomplete.”

3. Ms. Sethi submits that the Id. Counsel on behalf of the petitioner / DTC argued before the Labour Court that the conductor himself initially admitted his guilt by signing the challan and handing over unpunched tickets. Therefore, the enquiry findings cannot be called as perverse. It should only appeal to the common prudence and strict rules of pleadings and proof are not expected in a domestic enquiry.

4. To prove the above charges MW1, Rajbir Singh in his affidavit Ex.MW1/A deposed that he along with checking team of Jai Chand, Sohan Lal and Satish Kumar checked the bus at Nawab Ganj. The bus was on the route from Delhi to Tanakpur. They found 15 passengers ticketless going to different places. They paid full fare to the respondent / workman, but he did not issue them the tickets. The respondent / workman admitted the guilt and handed over 15 unpunched tickets. Statements of passengers were recorded and the respondent / workman countersigned the same. The way voucher was also incomplete. This witness proved the challan, unpunched tickets, passenger statements and the report at Ex.WW1/M-1 (challan), Ex.MW1/1 (report), Ex.MW1/2 (passengers statements) and Ex.MW1/3 (unpunched tickets).

5. Ms. Pasrija further submitted that respondent admitted having signed the statements of passengers and also admitted that he did not complain

against the checking staff for obtaining his signature by force. Further admitted, he received the challan without protest. However, he denied the suggestion that 13 passengers paid him money, but he did not issue tickets to them.

6. To strengthen her arguments, Id. Counsel has relied upon a case of ***DTC v. Rajpal and Anr. 2014 Law Suit (Del) 1586***, wherein this Court has held as under:

“13. She would also state that the principles of natural justice were violated by the Inquiry Officer and in that regard she would state as under:

(a) There was no Presenting Officer in the inquiry and the Inquiry Officer adopted the role of both Presenting Officer and the prosecutor which vitiates the inquiry and in this regard she would rely upon the judgment reported State of Uttaranchal & Ors. vs. Kharak Singh, (2009) 1 LLJ 235.

(b) The documents demanded by the respondent No.1 were not supplied. In that regard she would rely upon the judgment State of U.P vs. Shatrughan Lal & Anr, 1998 6 JT 55.

(c) The Inquiry Officer did not permit him to lead his evidence and he was made to sit outside the room and he was not given proper opportunity to cross examine the witnesses and these averments of the respondent No.1 have gone unchallenged. According to her the statement of Harbilas was never recorded in the inquiry proceedings and which is against the judgment of the Supreme Court in the case of M/s Khardah & Co. Ltd. vs. The Workman AIR 1964 SC 719.

(d) The respondent No.1 requested the checking staff to check the cash which was not done and as such the allegation of cheating cannot stand. In that regard she would rely upon the judgment of the Division Bench of this Court in the case 133 Delhi Transport Corporation vs. Anup Singh, (2006) 133 DLT 148.

(e) The petitioner did not produce any document or witness to prove the misconduct of the respondent No.1. She rely upon the judgment of the Supreme Court in the case Neeta Kaplish vs. Presiding Officer, Labour Court & Anr., 1999 LLR 122, wherein the Supreme Court held that after vitiation of inquiry records pertaining to domestic inquiry could not constitute material on record.

(f) She would state that the past record should have been found part of the second notice so that he can give explanation. In that regard she would rely upon the judgment of the Supreme Court in the case State of Mysore vs. K.Manche Gowda, 1964 (4) SCR 540

22. *The Supreme Court in the case of State of Haryana vs. Rattan Singh Civil Appeal No. 922/1976, wherein, the Supreme Court has held as under:*

“The simple point is, was there some evidence or was there no evidence not in the sense of the technical rules governing regular court proceedings but in a fair common-sense way as men of understanding and wordly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of ending is certainty available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the flying squad, is some evidence which has relevance to the charge leveled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground.”

7. Ld. Counsel also relied upon a case of ***Divisional Controller, KSRTC (NWKRTC) v. A.T. Mane, 2005 3 SCC 254*** wherein the Apex Court held as under:

“11. In the instant case also there is the evidence of the inspector who conducted the checking which establishes the misconduct of the respondent based on which a finding was given that the respondent was guilty of the misconduct alleged. Based on the said finding, the

disciplinary authority has punished the respondent by an order of dismissal. But the Labour Court, and the learned single Judge rejected the said finding and set aside the punishment imposed solely on the ground that the evidence of the passengers concerned was not adduced and their statements were not recorded by the inspector which as stated in the Rattan Singh's case is not a condition precedent. Therefore, we are of the opinion that the courts below have erred in interfering with the finding of fact on an erroneous basis.

12. Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment, on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person is found guilty of misappropriating corporation's fund, there is nothing wrong in the corporation losing confidence or faith in such a person and awarding a punishment of dismissal.

13. This Court in the case of B.S. Hullikatti (supra) held in a similar circumstances that the act was either dishonest or was so grossly negligent that the respondent therein was not fit to be retained as a conductor. It also held that in such cases there is no place for generosity or misplaced sympathy on the part of the judicial forums and thereby interfere with the quantum of punishment.”

8. Ld. Counsel submits that despite the guilt proved against the respondent / workman, the Ld. Labour Court while ignoring the evidence on record passed the award in favour of respondent / workman and against the petitioner.

9. The case of the petitioner before the Labour Court was that the respondent / workman was guilty of cheating made during the course of his employment. He took the due fare from the passengers, however no tickets were issued to them. Thus, he has caused the financial loss to the Corporation.

10. Based on the pleadings, vide order dated 07.11.1997, Id. Labour Court framed the following issues:

“1. Whether the domestic enquiry was not conducted according to the principles of natural justice and is therefore, not fair, proper and valid?”

11. In Para 7 of the impugned award it is recorded that by a separate order dated 02.06.2009, issue no. 1 is answered by holding that the enquiry was in accordance with the principle of natural justice. However, the terms of reference before the Id. Labour Court was that, while the respondent / workman was on duty in the bus, the same was checked by the checking staff.

12. Ex.WW1/M-2 is the chargesheet wherein it is stated that the bus was on the route from Delhi to Tanakpur. The checking team found that the two passengers alighting from the bus were ticketless and when enquired, these passengers told the checking staff that they boarded the bus at Bareilly and paid Rs.14/- to the Conductor, but he did not issue tickets to them despite payment.

13. Further charge is that 13 passengers were found without tickets. When enquired it was found that two were travelling from Bareilly to Naharia, one from Bareilly to Manjhola and 10 people from Bareilly to Pilibhit and these people respectively had paid Rs.32/- (for two tickets), Rs.17.50 (for one ticket) and Rs.120/- (for 10 tickets). The Conductor collected the amount from them, however did not issue the tickets.

14. The third charge is that the way voucher was found incomplete.

15. To prove the aforesaid charges, Management examined MW1, Rajbir Singh and he narrated the story as noted above.

16. However, during cross-examination it is elicited that respondent / Conductor intimated the checking staff that 44 passengers boarded the bus from Bareilly and he had issued tickets to 29 passengers. He denied the suggestion that the Conductor was still in a position of issuing the tickets when the checking had taken place. He was also unable to say the distance between the Nawab Ganj to Office Ganj. According to this witness, the bus was checked at Nawab Ganj. He admitted having collected the hand book and other documents from the Conductor on boarding the bus. He denied the suggestion that the Conductor requested the checking staff to allow him to complete the issuance of tickets. He also admitted that the checking staff made an endorsement on the checking sheet which he has not brought. He also admits having not recorded the statements of two passengers on the back of the challan, but the respondent / workman had signed it.

17. MW2, Satish Kumar in his affidavit Ex.MW2/A had repeated the examination in chief as is found in the evidence of MW1. He admitted having not issued chargesheet. He was also the part of the checking staff. This witness has been dropped by the Management as per the submissions made by the AR of Management on 09.10.2009.

18. MW3, Sh. P.K. Rao is the disciplinary authority, who deposed that the then Deputy Manager had initiated enquiry against the workman as the reply of the workman to the chargesheet was not satisfactory. Enquiry Officer sent the report and a show cause notice was issued. Respondent gave the reply belatedly and reply was considered by MW3, P.K. Rao, who

confirmed the order of proposed penalty as depicted in the show cause notice. In his cross-examination he admitted that he has not issued the chargesheet. However, admitted that the past record was not supplied to the workman along with show cause notice.

19. The respondent / workman had led the rebuttal evidence by producing his affidavit Ex.WW1/B. According to him, soon after entering the bus, the checking staff collected all the documents. He issued tickets to such passengers, who paid him the fare. He denied having admitted the guilt before the checking staff. He was not confronted with the passengers nor the statements were recorded in his presence. The respondent / workman requested for checking the cash which the check staff did not do. There was no misconduct on his part. The past record of the workman is very clean.

20. All the passengers according to chargesheet were travelling from different places. Ex.MW1/2 is the statement of passengers. The first statement of passengers according to MW2 was got written by one Sohan Lal. The said Sohan Lal was not examined, as he is no more in service of the petitioner Corporation. There is no signature of the respondent / workman on the other two parts of the statements.

21. The evidence of MW3 shows that he has relied on the past record of respondent / workman prior to passing of impugned order of removal. He admitted that the past record was not supplied to the respondent / workman. Thus, there was no occasion for the respondent / workman to reply the same to the disciplinary authority. Moreover, the past record of the respondent / workman was not the part of the chargesheet. Had it been the part of the chargesheet, respondent / workman would have replied for the same. Thus,

the respondent / workman who was prevented from meeting out the adverse situation had been put to prejudice.

22. Though the respondent / workman had admitted that the checking staff had checked his bus. However he denied the allegations. It is the outset duty of the disciplinary authority to establish their case in four corners and if there is no strong evidence against the respondent / workman, then whatever the admitted facts, he cannot be punished for the same.

23. The petitioner / Corporation had to take all care in the departmental enquiry. Though the departmental enquiry was against the respondent, he participated in the same. Further, on perusal of the enquiry report, Ld. Labour Court finds no strong evidence against the respondent / workman and in favour of the petitioner.

24. Accordingly, the Ld. Labour Court allowed the petition filed by the respondent / workman and consequently directed the petitioner / corporation to reinstate the workman with continuity of service of the purpose of seniority, pension, gratuity and other benefits.

25. In view of the facts and evidence discussed above, I find no merit in the instant petition. Same is accordingly dismissed with no order as to costs.

SURESH KAIT, J

SEPTEMBER 09, 2014

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